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this Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|-----------------------|
| MATTHEW WINKLE, |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 49A02-0608-CR-629 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gaughan, Commissioner
Cause No. 49G16-0605-CM-96237

March 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Matthew Winkle appeals his conviction in a bench trial for battery, as a class A misdemeanor.¹

We affirm.

ISSUE

Whether the evidence was insufficient to rebut Winkle's self-defense claim.

FACTS

On May 26, 2006, Winkle and his girlfriend, Amanda Longfellow, were at the home of Longfellow's mother in Marion County when Winkle and Longfellow began arguing in the living room. Longfellow "tried to leave," but Winkle grabbed her by her arms and "carried [her] into the bedroom," where the argument continued. (Tr. 8).

Longfellow again "tried to leave through the window," but Winkle "grabbed [her] by [her] foot." (Tr. 8). Longfellow, who "was scared," (Tr. 8) then "went for [her] gun," (Tr. 8) a "Smith and Wesson nine millimeter," (Tr. 10) which was in the nightstand. Winkle "took [the gun] out of [Longfellow's] hand" (Tr. 9) by "grabb[ing] it by the barrel" (Tr. 12). After hiding the gun in the living room, Winkle left to get Longfellow's son. Once Winkle left, Longfellow telephoned the police.

Nicholas Stewart, a deputy with the Marion County Sheriff's Department, arrived at the residence after receiving a report of a domestic disturbance. As Deputy Stewart arrived on the scene, he observed Winkle return to the residence, "get out of the driver's

¹ Ind. Code § 35-42-2-1.

seat and begin hollering.” (Tr. 16). While another deputy stayed with Winkle, Deputy Stewart spoke with Longfellow. Deputy Stewart observed “redness and abrasions to [Longfellow’s] biceps” and an abrasion above her eye. (Tr. 17). As Deputy Stewart placed Winkle under arrest, Winkle admitted “that he did put his hands on the arms of [Longfellow] and was holding her down to get her attention” (Tr. 18).

On May 27, 2006, the State charged Winkle with battery, as a class A misdemeanor. Following a bench trial on July 6, 2006, the trial court found Winkle guilty. The trial court sentenced Winkle to 365 days, with 261 days suspended.

DECISION

Winkle asserts the evidence was insufficient to support his conviction for battery. Specifically, Winkle argues that the State failed to disprove his claim of self-defense.

Indiana Code section 35-42-2-1 provides that a person “who knowingly or intentionally touches another person in a rude, insolent, or angry manner,” resulting in bodily injury, commits battery, as a class A misdemeanor. Indiana Code section 35-41-3-2(a), however, provides that “[a] person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.”

For a claim of self-defense to prevail, the defendant must show that he (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm.

Wilcher v. State, 771 N.E.2d 113, 116 (Ind. Ct. App. 2002), *trans. denied*. The State bears the burden of disproving one of the elements of self-defense once a defendant

asserts such a claim. *Id.* “The State may rebut a claim of self-defense by affirmatively showing that the defendant did not act to defend himself or another by relying on the evidence elicited in the case-in-chief.” *Id.*

We review a challenge to the sufficiency of evidence to rebut a claim of self-defense as we would any sufficiency of the evidence challenge. *Rodriguez v. State*, 714 N.E.2d 667, 670 (Ind. Ct. App. 1999), *trans. denied*. We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and, if there is substantial evidence of probative value to support the conviction, it will not be set aside. *Id.*

In support of his claim of self-defense, Winkle relies on his own testimony at trial. During the trial, Winkle denied carrying Longfellow into the bedroom, claiming that she ran into the bedroom and he followed. Winkle testified that he grabbed Longfellow only in an effort to disarm her. Longfellow, however, testified that she picked up the gun subsequent to Winkle forcibly carrying her into the bedroom and preventing her from escaping by grabbing her foot.

We find that the evidence was sufficient to negate Winkle’s claim of self-defense, where the State presented evidence that Winkle instigated or provoked the violence and committed the battery against Longfellow before she armed herself. Winkle’s claim to the contrary is merely an invitation to judge the credibility of the witnesses and to reweigh the evidence, which we will not do.

Affirmed.

BAKER, C.J., and ROBB, J., concur.